

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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|---|---|---------------------------|
| SAVE THE SOUND and ATLANTIC CLAM FARMS of CONNECTICUT, INC., | X | |
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| | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | |
| | : | |
| WESTCHESTER COUNTY, NEW YORK; | : | |
| TOWN/VILLAGE OF HARRISON; VILLAGE OF | : | Case No. 7:15-cv-06323-CS |
| LARCHMONT; TOWN OF MAMARONECK; | : | |
| CITY OF NEW ROCHELLE; VILLAGE OF | : | |
| PELHAM MANOR; CITY OF RYE; VILLAGE OF | : | |
| RYE BROOK; and VILLAGE OF SCARSDALE; | : | |
| | : | |
| Defendants. | : | |
| | X | |

**SUPPLEMENT TO AMENDED STIPULATED ORDER
WITH RESPECT TO DEFENDANT CITY OF RYE**

Plaintiffs Save the Sound and Atlantic Clam Farms of Connecticut, Inc., and defendant City of Rye (“Rye”) (collectively, the “Parties”) hereby enter into this Supplement to the Amended Stipulated Order (“Supplemental Order”) in further settlement of this action.

WHEREAS, Plaintiffs commenced this action asserting, *inter alia*, claims that Rye was in violation of provisions of the Clean Water Act (33 U.S.C. § 1365 *et seq.*), was in violation of provisions of the County Environmental Facilities Sewer Act (Charter and Administrative Code of Westchester County, Article 824) (“County Sewer Act”), and was contributing to a public nuisance;

WHEREAS, on February 24, 2021, the Court entered a Stipulated Order as to Rye, ECF 192 (“Stipulated Order”), setting forth (*inter alia*) requirements for repairs and remediation to the Rye sewer system; for the study and adoption of financial measures necessary to cover such projects; for the implementation of ongoing operational and management measures; and for an environmental benefit project, all to be completed on an agreed-upon schedule (“Stipulated Schedule”);

WHEREAS, subsequent to Stipulated Order I, Rye failed to complete all the work by the deadlines set forth in the Stipulated Schedule and, on August 15, 2023, the Court entered an Amended Stipulated Order as to Rye, ECF 268 (the “Amended Order”);

WHEREAS, for a variety of reasons, some of which were outside of Rye's control, Rye did not complete every deliverable in accordance with the Amended Order; and

WHEREAS, certain deliverables remain outstanding, requiring further adjustment to the Stipulated Schedule; and

WHEREAS, pursuant to the Amended Order ¶ 35, Rye has accrued stipulated additional environmental benefit payments ("EBPs") in excess of \$260,000;

NOW, THEREFORE, without the trial of any issue of fact or law, without the admission by Defendant of any of the facts or violations alleged in the Complaint, upon consent of the Parties, and upon consideration of the mutual promises contained herein,

IT IS HEREBY STIPULATED BETWEEN THE PARTIES AND ORDERED, ADJUDGED AND DECREED BY THE COURT AS FOLLOWS:

- A. **Review by Agencies and Entry of Supplemental Order.** Pursuant to 33 U.S.C. § 1365(c)(3), this Supplemental Order cannot be entered by the Court until forty-five (45) days after the receipt of a copy of the proposed Supplemental Order by the United States Department of Justice and Environmental Protection Agency. The Parties shall follow the procedures set forth in the Amended Order, Paragraphs 16–17, to secure entry of this Supplemental Order by the Court. This Supplemental Order shall take effect on the date it is entered by the Court (the "Effective Date").
- B. **Amended Order, Appendix A – Remedial Measures, Paragraph 1** is hereby amended as follows:
1. Rye shall complete the following work by December 31, 2024:
 - a. Complete at least a total of 250 open cut replacements/point repairs/pipe linings;
 - b. Complete a minimum of 200 manhole repairs.
- C. **Amended Order, Appendix B – Sewer System Management and Operational Measures, Paragraph 2 deadlines** are hereby amended as follows:

Rye shall submit a revised CMOM program document that is consistent with industry standards and Appendix B, sub-Paragraphs 2.a–2.i, for final approval within thirty (30) days of the Effective Date of this Supplemental Order.

D. Stipulated Additional EBP.

- i. **Project Three:** Rye shall pay a total of one hundred and forty thousand dollars (\$140,000) on projects to reduce, mitigate, and remediate stormwater pollution to the Long Island watershed. On or before October 31, 2024, Rye shall complete Project Three, attached hereto as Appendix F. An accounting will be provided to Plaintiffs on or before November 15, 2024. Plaintiffs will have until December 10, 2024, to object to any costs included in the final accounting. If the final accounting results in costs less than \$140,000, the difference will be added to the EBP Maintenance Fund set forth in sub-Paragraph D.ii, *infra*.
- ii. **EBP Maintenance Fund:** In addition to Project Three, Rye agrees to earmark an additional thirty thousand dollars (\$30,000) as part of its 2025 annual budget for maintenance of the three EBP Projects conducted pursuant to settlement of this action, namely: Project One (Stipulated Order ¶ 12, retrofitting downtown parking lot with green infrastructure); Project Two (Amended Order ¶ 12, installing bioretention swale at Recreation Center); and Project Three (Supplemental Order ¶ D.i, *supra*). Rye shall provide an annual report as to the status of the EBP Projects and maintenance activities to Plaintiffs throughout the Term of Decree.
- iii. **Remaining Stipulated Additional EBP:** To the extent Rye accrued Stipulated Additional EBPs in excess of \$260,000, such sum is waived. The remaining ninety-thousand dollars (\$90,000) is suspended, as follows:
 - a. Forty-five thousand dollars (\$45,000) shall immediately be due and payable to the Rye Nature Center if Rye fails to meet the deadline set forth in Paragraph B, *supra*.
 - b. Forty-five thousand dollars (\$45,000) shall immediately be due and payable to the Rye Nature Center if Rye fails to meet the deadline set forth in Paragraph C, *supra*.
 - c. Any payment made pursuant to this sub-paragraph shall be for use on projects relating to the reduction, mitigation, and/or remediation of the effects of stormwater pollution or environmental restoration of, or other benefit to, the Long Island Sound watershed.
- iv. Paragraph 35 of the Amended Order applies to any late Deliverable under this Supplemental Order.

- E. **Fees and Costs.** Rye shall pay a sum of fifteen thousand dollars (\$15,000) as full and complete satisfaction of Plaintiffs' claims for attorneys' fees and costs incurred to date, including investigative and expert costs, against Rye. The City of Rye will arrange for

disbursement by Corporate Counsel within thirty (30) days of the Parties' execution of this Supplemental Order. Corporate Counsel will transfer the payment to Plaintiffs' attorney within seven (7) days of the Effective Date of this Supplemental Order. The check or electronic transfer shall be payable to "Super Law Group, LLC Attorney Trust – IOLA." Payments will be deposited in Super Law Group's IOLA Trust Account for the benefit of Plaintiffs. This Paragraph is in addition to and does not modify any payment set forth in the Amended Order, § V.

F. All other Paragraphs of the Amended Order and its Appendices remain the same and binding on the Parties.

Dated: October 22, 2024

City of Rye

Kristen K. Wilson
By: Kristen K. Wilson
Title: corporate counsel

Dated: _____

Save the Sound

By:
Title:

Dated: _____

Atlantic Clam Farms of Connecticut

By:
Title:

ENTERED and DATED this _____ day of _____, 2024.

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F. All other Paragraphs of the Amended Order and its Appendices remain the same and binding on the Parties.

Dated: _____

City of Rye

By: _____

Title: _____

Dated: 10/23/2024

Save the Sound

By: 

Title: Senior Legal Director

Dated: October 23, 2024

Atlantic Clam Farms of Connecticut

By: 

Title: Edan Rotenberg
Attorney for Atlantic Clam Farms of Connecticut, In
with permission of Edward Stilwagen, President

ENTERED and DATED this _____ day of _____, 2024.

SO ORDERED.


CATHY SEIBEL, U.S.D.J. 10/24/24

The Clerk shall terminate ECF No. 297.